

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

House Engrossed
FILED
KEN BENNETT
SECRETARY OF STATE

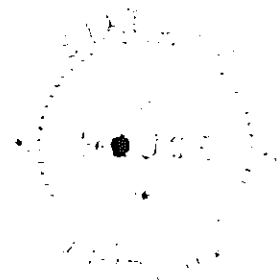
CHAPTER 38

HOUSE BILL 2308

AN ACT

AMENDING SECTIONS 20-2102 AND 20-2113, ARIZONA REVISED STATUTES; RELATING TO
INSURANCE INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-2102, Arizona Revised Statutes, is amended to
3 read:

4 20-2102. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Adverse underwriting decision" means any of the following actions
7 involving insurance coverage which is individually underwritten:

8 (a) A declination of insurance coverage.

9 (b) A termination of insurance coverage.

10 (c) Failure of an insurance producer to apply for insurance coverage
11 with a specific insurance institution which the insurance producer represents
12 and which is requested by an applicant.

13 (d) In the case of property or casualty insurance coverage, placement
14 by an insurance institution or insurance producer of a risk with a residual
15 market mechanism, an unauthorized insurer or an insurance institution which
16 specializes in substandard risks, or the charging of a higher rate on the
17 basis of information which differs from that which the applicant or
18 policyholder furnished.

19 (e) In the case of life, health or disability insurance coverage, an
20 offer to insure at higher than standard rates.

21 (f) In the case of property or casualty insurance, assigning an
22 applicant or policyholder to a higher rating tier or failing to apply a
23 premium discount or credit based on any credit related information derived
24 from the applicant's or policyholder's consumer report, insurance score or
25 lack of credit history.

26 Notwithstanding subdivisions (a) through (f) of this paragraph, the
27 termination of an individual policy form on a class or statewide basis, a
28 declination of insurance coverage solely because the coverage is not
29 available on a class or statewide basis or the rescission of a policy is not
30 considered an adverse underwriting decision, but the insurance institution or
31 insurance producer responsible for its occurrence shall provide the applicant
32 or policyholder with the specific reasons for its occurrence.

33 2. "Affiliate" or "affiliated" means a person that directly or
34 indirectly through one or more intermediaries controls, is controlled by or
35 is under common control with another person.

36 3. "Applicant" means any person who seeks to contract for insurance
37 coverage other than a person seeking group insurance that is not individually
38 underwritten.

39 4. "Consumer report" means any written, oral or other communication of
40 information bearing THAT BEARS on a natural person's creditworthiness, credit
41 standing, credit capacity, character, general reputation, personal
42 characteristics or mode of living and which THAT is used or expected to be
43 used in connection with an insurance transaction.

44 5. "Consumer reporting agency" means any person who does any of the
45 following:

1 (a) Regularly engages, in whole or in part, in the practice of
2 assembling or preparing consumer reports for a monetary fee.

3 (b) Obtains information primarily from sources other than insurance
4 institutions.

5 (c) Furnishes consumer reports to other persons.

6 6. "Control", including the terms "controlled by" or "under common
7 control with", means the possession, direct or indirect, of the power to
8 direct or cause the direction of the management and policies of a person,
9 whether through the ownership of voting securities, by contract other than a
10 commercial contract for goods or nonmanagement services, or otherwise, unless
11 the power is the result of an official position with or corporate office held
12 by the person.

13 7. "Declination of insurance coverage" means a denial, in whole or in
14 part, by an insurance institution or insurance producer of requested
15 insurance coverage.

16 8. "Individual" means any natural person who:

17 (a) In the case of property or casualty insurance, is a past, present
18 or proposed named insured or certificate holder.

19 (b) In the case of life, health or disability insurance, is a past,
20 present or proposed principal insured or certificate holder.

21 (c) Is a past, present or proposed policyowner.

22 (d) Is a past or present applicant.

23 (e) Is a past or present claimant.

24 (f) Derived, derives or is proposed to derive insurance coverage under
25 an insurance policy or certificate subject to this chapter.

26 9. "Institutional source" means any person or governmental entity that
27 provides information about an individual to an insurance producer, insurance
28 institution or insurance support organization, other than an insurance
29 producer, the individual who is the subject of the information or a natural
30 person acting in a personal capacity rather than in a business or
31 professional capacity.

32 10. "Insurance institution" means any corporation, association,
33 partnership, reciprocal insurer, inter-insurer, Lloyd's association,
34 fraternal benefit society or other person engaged in the business of
35 insurance, including health care service organizations and hospital, medical,
36 dental and optometric service corporations as defined in this title.
37 Insurance institution does not include insurance producers or insurance
38 support organizations.

39 11. "Insurance producer" means an insurance producer as defined in
40 section 20-281 or a managing general agent as defined in section 20-311.

41 12. "Insurance score" means, for the purpose of insurance underwriting
42 or rating, a designation that is derived by using a variety of data sources,
43 including an individual's consumer report in an algorithm, computer program,
44 model or other process that reduces the data to a number, alpha character or
45 rating that is used for insurance underwriting and rating decisions.

1 13. "Insurance support organization" means:

2 (a) Any person who regularly engages, in whole or in part, in the
3 practice of assembling or collecting information about natural persons for
4 the primary purpose of providing the information to an insurance institution
5 or insurance producer for insurance transactions, including the furnishing of
6 consumer reports or investigative consumer reports to an insurance
7 institution or insurance producer for use in connection with an insurance
8 transaction or the collection of personal information from insurance
9 institutions, insurance producers or other insurance support organizations
10 for the purpose of detecting or preventing fraud, material misrepresentation
11 or material nondisclosure in connection with insurance underwriting or
12 insurance claim activity.

13 (b) Notwithstanding subdivision (a) of this paragraph the following
14 persons are not considered insurance support organizations for purposes of
15 this chapter:

- 16 (i) Insurance producers.
17 (ii) Government institutions.
18 (iii) Insurance institutions.
19 (iv) Medical care institutions.
20 (v) Medical professionals.

21 14. "Insurance transaction" means any transaction ~~involving~~ THAT
22 INVOLVES insurance primarily for personal, family or household needs rather
23 than business or professional needs and ~~which~~ THAT entails the determination
24 of an individual's eligibility for an insurance coverage, benefit or payment
25 or the servicing of an insurance application, policy, contract or
26 certificate, INCLUDING TRANSFERS OF BUSINESS.

27 15. "Investigative consumer report" means a consumer report or portion
28 of a consumer report in which information about a natural person's character,
29 general reputation, personal characteristics or mode of living is obtained
30 through personal interviews with the person's neighbors, friends, associates,
31 acquaintances or others who may have knowledge concerning those items of
32 information.

33 16. "Medical care institution" means any facility or institution that
34 is licensed to provide health care services to natural persons including:

- 35 (a) Health care service organizations.
36 (b) Home health agencies.
37 (c) Hospitals.
38 (d) Medical clinics.
39 (e) Public health agencies.
40 (f) Rehabilitation agencies.
41 (g) Skilled nursing facilities.

42 17. "Medical professional" means any person licensed or certified to
43 provide health care services to natural persons, including a chiropractor,
44 clinical dietitian, clinical psychologist, dentist, nurse, a occupational

1 therapist, optometrist, pharmacist, physical therapist, physician,
2 podiatrist, psychiatric social worker or speech therapist.

3 18. "Medical record information" means personal information ~~which~~ THAT
4 relates to an individual's physical or mental condition, medical history or
5 medical treatment and THAT is obtained from a medical professional or medical
6 care institution, the individual or the individual's spouse, parent or legal
7 guardian.

8 19. "Personal information" means any individually identifiable
9 information gathered in connection with an insurance transaction and from
10 which judgments can be made about an individual's character, habits,
11 avocations, finances, occupation, general reputation, credit, health or any
12 other personal characteristics. Personal information includes an
13 individual's name and address and medical record information but does not
14 include privileged information.

15 20. "Policyholder" means any person who:

16 (a) In the case of individual property or casualty insurance, is a
17 present named insured.

18 (b) In the case of individual life, health or disability insurance, is
19 a present policyowner.

20 (c) In the case of group insurance which is individually underwritten,
21 is a present group certificate holder.

22 21. "Pretext interview" means an interview in which a person, in an
23 attempt to obtain information about a natural person, performs one or more of
24 the following acts:

25 (a) Pretends to be someone he or she is not.

26 (b) Pretends to represent a person he or she is not in fact
27 representing.

28 (c) Misrepresents the true purpose of the interview.

29 (d) Refuses to identify himself or herself upon ON request.

30 22. "Privileged information" means any individually identifiable
31 information that relates to a claim for insurance benefits or a civil or
32 criminal proceeding involving an individual and THAT is collected in
33 connection with or in reasonable anticipation of a claim for insurance
34 benefits or a civil or criminal proceeding involving an individual, except
35 that information otherwise meeting the requirements of this paragraph is
36 considered personal information under this chapter if it is disclosed in
37 violation of section 20-2113.

38 23. "Residual market mechanism" means an agreement for the equitable
39 apportionment among insurers of insurance afforded applicants who are in good
40 faith entitled to but who are unable to procure insurance through ordinary
41 methods.

42 24. "Termination of insurance coverage" or "termination of an insurance
43 policy" means either a cancellation or nonrenewal of an insurance policy, in
44 whole or in part, for any reason other than the failure to pay a premium as
45 required by the policy.

1 25. "TRANSFER OF BUSINESS":

2 (a) MEANS THE TRANSFER BY AN INSURANCE INSTITUTION OR INSURANCE
3 PRODUCER THAT OWNS THE POLICY EXPIRATION OF A POLICYHOLDER'S EXISTING POLICY
4 OF INSURANCE OR THE TRANSFER OF A GROUP OF POLICYHOLDERS' EXISTING POLICIES
5 OF INSURANCE TO ANOTHER INSURANCE INSTITUTION.

6 (b) DOES NOT INCLUDE THE TRANSFER OF BUSINESS BY AN INSURANCE PRODUCER
7 THAT IS UNDER AN EXCLUSIVE CONTRACT OR A CONTRACT REQUIRING THE INSURANCE
8 PRODUCER TO SUBMIT ALL ELIGIBLE BUSINESS TO AN INSURER OR GROUP OF INSURERS
9 UNDER A COMMON MANAGEMENT.

10 ~~25.~~ 26. "Unauthorized insurer" means an insurance institution that has
11 not been granted a certificate of authority by the director to transact
12 insurance in this state.

13 Sec. 2. Section 20-2113, Arizona Revised Statutes, is amended to read:
14 20-2113. Disclosure limitations and conditions

15 An insurance institution, insurance producer or insurance support
16 organization shall not disclose any personal or privileged information about
17 an individual collected or received in connection with an insurance
18 transaction unless the disclosure is:

19 1. With the written authorization of the individual except that:

20 (a) If the authorization is submitted by another insurance
21 institution, insurance producer or insurance support organization, the
22 authorization shall meet the requirements prescribed in section 20-2106.

23 (b) If the authorization is submitted by a person other than an
24 insurance institution, insurance producer or insurance support organization,
25 the authorization shall be dated, signed by the individual and obtained one
26 year or less ~~prior to~~ BEFORE the date a disclosure is sought pursuant to this
27 section.

28 2. To a person other than an insurance institution, insurance producer
29 or insurance support organization, if the disclosure is reasonably necessary:

30 (a) To enable the person to perform a business, professional or
31 insurance function for the disclosing insurance institution, insurance
32 producer or insurance support organization and the person agrees not to
33 disclose the information further without the individual's written
34 authorization unless the further disclosure either:

35 (i) Would otherwise be permitted by this section if made by an
36 insurance institution, insurance producer or insurance support organization.

37 (ii) Is reasonably necessary for the person to perform the
38 individual's function for the disclosing insurance institution, insurance
39 producer or insurance support organization.

40 (b) To enable the person to provide information to the disclosing
41 insurance institution, insurance producer or insurance support organization
42 for the purpose of determining an individual's eligibility for an insurance
43 benefit or payment or detecting or preventing criminal activity, fraud,
44 material misrepresentation or material nondisclosure in connection with an
45 insurance transaction.

1 3. To an insurance institution, insurance producer, insurance support
2 organization or self-insurer if the information disclosed is limited to that
3 which is reasonably necessary EITHER:

4 (a) To detect or prevent criminal activity, fraud, material
5 misrepresentation or material nondisclosure in connection with insurance
6 transactions. ~~or~~

7 (b) For ~~either~~ the disclosing or receiving insurance institution,
8 insurance producer or insurance support organization to perform its function
9 in connection with an insurance transaction involving the individual.

10 4. To a medical care institution or medical professional for the
11 purpose of verifying insurance coverage or benefits, informing an individual
12 of a medical problem of which the individual may not be aware or conducting
13 an operations or service audit, if only the information ~~which~~ THAT is
14 reasonably necessary to accomplish the purposes prescribed by this paragraph
15 is disclosed.

16 5. To an insurance regulatory authority.

17 6. To a law enforcement or other governmental authority to protect the
18 interests of the insurance institution, insurance producer or insurance
19 support organization in preventing or prosecuting the perpetration of fraud
20 upon it, or if the insurance institution, insurance producer or insurance
21 support organization reasonably believes that illegal activities have been
22 conducted by the individual.

23 7. Otherwise permitted or required by law.

24 8. In response to a valid administrative or judicial order, including
25 a search warrant or subpoena.

26 9. Made for the purpose of conducting actuarial or research studies,
27 except that no individual may be identified in any actuarial or research
28 report, materials allowing the individual to be identified shall be returned
29 or destroyed as soon as they are no longer needed and the actuarial or
30 research organization shall agree not to disclose the information unless the
31 disclosure would otherwise be permitted by this section if made by an
32 insurance institution, insurance producer or insurance support organization.

33 10. To a party or a representative of a party to a proposed or
34 consummated sale, transfer, merger or consolidation of all or part of the
35 business of the insurance institution, insurance producer or insurance
36 support organization, except that ~~prior to~~ BEFORE the consummation of the
37 sale, transfer, merger or consolidation only the information is disclosed
38 ~~which~~ THAT is reasonably necessary to enable the recipient to make business
39 decisions about the purchase, transfer, merger or consolidation and the
40 recipient agrees not to disclose the information unless the disclosure would
41 otherwise be permitted by this section if made by an insurance institution,
42 insurance producer or insurance support organization.

43 11. To a person whose only use of the information will be in connection
44 with the marketing of a product or service if:

1 (a) No medical record information, privileged information or personal
2 information relating to an individual's character, personal habits, mode of
3 living or general reputation is disclosed and no classification derived from
4 the information is disclosed.

5 (b) The individual has been given an opportunity to indicate that the
6 individual does not want personal information disclosed for marketing
7 purposes and has given no indication that the individual does not want the
8 information disclosed.

9 (c) The person receiving the information agrees not to use it except
10 in connection with the marketing of a product or service.

11 12. To an affiliate whose only use of the information will be in
12 connection with an audit of the insurance institution or insurance producer
13 or the marketing of an insurance or financial product or service, if the
14 affiliate agrees not to disclose the information for any other purpose or to
15 an unaffiliated person, except that no medical record information may be
16 disclosed for marketing purposes without the individual's written consent.

17 13. By a consumer reporting agency if the disclosure is to a person
18 other than an insurance institution or insurance producer.

19 14. To a group insurance policyholder for the purpose of reporting
20 claims experience or conducting an audit of the insurance institution's or
21 insurance producer's operations or services if the information disclosed is
22 reasonably necessary for the recipient to conduct the review or audit.

23 15. To a professional peer review organization for the purpose of
24 reviewing the service or conduct of a medical care institution or medical
25 professional.

26 16. To a governmental authority for the purpose of determining the
27 individual's eligibility for health benefits for which the governmental
28 authority may be liable.

29 17. To a certificate holder or policyholder for the purpose of
30 providing information regarding the status of an insurance transaction.

31 Sec. 3. Intent

32 The amendments to sections 20-2102 and 20-2113, Arizona Revised
33 Statutes, as amended by this act are intended to clarify the legislature's
34 original intent and meaning in the administration of these statutes.

APPROVED BY THE GOVERNOR APRIL 9, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2010.